

5/11/22

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WEST. DIV. DAYTON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DEM TECHNOLOGY LLC,
EVAN MORGAN

Defendants.

CASE NO. 3:22-cr-48

JUDGE Michael J. Newman

INFORMATION

THE UNITED STATES ATTORNEY CHARGES:

At all times material to this Information, in the Southern District of Ohio, and elsewhere:

I. Introduction

1. Defendant DEM TECHNOLOGY LLC (“DEM”) was an Ohio corporation located in Dayton, Ohio. DEM produced a variety of products, including a surface sanitizer spray known as SaniGuard. SaniGuard was registered with the Environmental Protection Agency (“EPA”). DEM also made a product called SaniGuard Total Release Fogger, which was marketed as having the ability to disinfect an entire room through the use of a continuous, fogging spray. SaniGuard Total Release Fogger was not registered with the EPA.
2. Defendant EVAN MORGAN was an Ohio resident who served as the Vice President of DEM.

II. The Federal Pesticide Control Law

3. The manufacture, distribution, and use of pesticides is regulated by the Federal Insecticide, Fungicide, and Rodenticide Act, Title 7, United States Code (“U.S.C.”),

Sections 136, et seq., (“FIFRA”) and the regulations promulgated under its authority by the EPA.

4. The term “pesticide” is defined in Title 7 U.S.C. § 136(u) as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. Under Title 7 U.S.C. § 136(t) a pest could include any insect, animal, plant, fungus, or micro-organism living outside of humans and animals.
5. Except as provided by law, under Title 7 U.S.C. § 136a, no person may distribute or sell any pesticide in the United States without its first being registered with EPA. Before registering a pesticide, EPA requires that it be tested in order to determine its impact upon human health and the environment and in order to develop specific instructions and restrictions for its safe and effective use. EPA requires these instructions, restrictions, and warnings to be clearly stated on a pesticide’s label and affixed to every container of the pesticide that is distributed or sold. Pesticide producers are required to maintain records demonstrating EPA’s registration of the products they manufacture and distribute. 7 U.S.C. § 136f.
6. The term “person” means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not. 7 U.S.C. § 136(s).
7. The phrase “distribute or sell” means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver. 7 U.S.C. § 136(gg).
8. Title 7 U.S.C. § 136j(a)(1)(A) states that it shall be unlawful for any person in any State to distribute or sell to any person any registered pesticide if any claims made for it as a

part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under 7 U.S.C. § 136a.

9. Pursuant to 7 U.S.C. § 136l(b)(1)(a) any registrant, applicant for a registration, or producer who knowingly violates FIFRA restrictions shall be fined not more than \$50,000 or imprisoned for not more than 1 year, or both. All other persons who distribute or sell pesticides who knowingly violate FIFRA restrictions shall be fined not more than \$25,000 or imprisoned for not more than 1 year, or both.
10. Pursuant to 7 U.S.C. § 136(y) the term “registrant” means a person who has registered any pesticide pursuant to the provisions of 7 U.S.C, Subchapter II.

III. Factual Background

11. DEM was the registrant of SaniGuard, a surface spray disinfectant. Beginning no later than 2004, DEM produced, marketed, distributed, and sold SaniGuard Total Release Fogger (“SaniGuard Fogger”). As part of its marketing, DEM represented that the SaniGuard Fogger could sanitize an entire room, including killing viruses and bacteria that were present.
12. On two occasions in 2004 and 2005, the EPA sent letters to DEM alerting it that the company had not supplied the EPA with efficacy data to support SaniGuard’s use as a fogger. From 2004 to 2012, DEM received and acknowledged repeated correspondence from the EPA, directing the removal of fogging language from the SaniGuard label.
13. On July 21, 2015, DEM and the EPA signed a Consent Agreement and Final Order (Consent Order), which ordered DEM to pay a civil penalty based on its sale and distribution of SaniGuard Fogger, in violation of FIFRA.

14. Despite the Consent Order, DEM did not stop producing, distributing, or selling SaniGuard Fogger. Indeed, Defendants DEM and EVAN MORGAN continued to produce, distribute, and sell SaniGuard Fogger in 2015, 2016, 2017, and 2018.

COUNTS 1 - 4
FIFRA
7 U.S.C. §§ 136j(a)(1)(A); 18 U.S.C. § 2

15. On or about the dates listed below, within the Southern District of Ohio and elsewhere, defendants DEM TECHNOLOGY LLC, a FIFRA registrant, and EVAN MORGAN, a person who distributed and sold pesticides, knowingly distributed and sold, and aided the distribution and sale, of a registered pesticide where claims made for it as a part of its distribution and sale substantially differed from claims made for it as a part of the statement required in connection with its registration under 7 U.S.C. § 136a.

| Count | Date Range |
|--------------|------------------------------|
| 1 | Jan. 1, 2015 – May 11, 2017 |
| 2 | May 12, 2017 – Dec. 31, 2017 |
| 3 | Jan. 1, 2018 – Jul. 31, 2018 |
| 4 | Aug. 1, 2018 – Oct. 25, 2018 |

In violation of 7 U.S.C. § 136j(a)(1)(A); 18 U.S.C. § 2.

KENNETH PARKER
UNITED STATES ATTORNEY

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

A handwritten signature in black ink, appearing to read "Adam Cullman", written in a cursive style.

s/Adam C. Cullman
ADAM C. CULLMAN (KY #93912)
Special Assistant United States Attorney &
Trial Attorney, Environmental Crimes Section
Environmental and Natural Resources Division
United States Department of Justice